recovered for the failure of the defendant to loan the money; but the court held, in view of the special circumstances, substantial damages covering losses directly accruing, as well as gains prevented, might furnish a legitimate basis for compensation to the injured party. It was held further that expenditures fairly incurred in preparation for performance, or part performance, where such expenditures are not otherwise reimbursed, would be proper subjects for consideration in estimating the damages. The court quotes with approval from the opinion of Mr. Justice Bradley in United States *v.* Bohan (110 U. S., 338, 4 Sup. Ct., 81, 28 L. Ed., 168) as follows:

"It does not lie, however, in the mouth of the party who has voluntarily and wrongfully put an end to the contract to say that the party injured has not been damaged at least to the amount of what he has been induced fairly and in good faith to lay out and expend."

Corporations—Stock Subscriptions—Fraudulent Representations. —In Jones *v.* Bankers' Trust Company (United States District Court, D. New Mexico, November 8, 1916, 239 Fed. 770), it is held that relief will be afforded against the fraudulent misrepresentations of an agent taking subscriptions to the capital stock of a corporation, even though the contract of subscription contains a clause providing that no statement, representation or agreement of warranty made by the agent should operate to cancel or annul the contract unless reduced to writing and incorporated therein. Plaintiffs had subscribed for $2,000 shares of the capital stock of the defendant corporation, agreeing to pay therefor $23,500. Five hundred dollars of the purchase price was presently paid in cash, the balance being evidenced by a promissory note due one year from date. In the sale, defendant was represented by two men who were its duly credited agents. After the transaction was completed, a suit was broug for the purpose of procuring a decree canceling and annulling the sale on the ground of the fraud, deceit and misrepresentation of the agents.

The contract contained a provision reading as follows: "I further agree that no statement, representation or agreement of warranty made to me by the person taking this contract shall in any way operate to cancel or annul this contract unless the same be reduced to writing."

With reference to this provision, and the statements made by the agents, the court says: "As provisions in writing such as that there relied upon by defendant to work an estoppel and close the door to an inquiry into the very truth of the matter are contrary to natural justice, they are strictly construed as to their terms against the party pleading the estoppel. Looking, therefore, first at the language of the provision in this light, it is seen by its very terms to be limited to statements, representations and agreements of war-

ranty alone. . . . . Now, the word 'warranty' has a well-defined legal meaning. . . . . Browne, in his work on Fraud, says: 'A warranty differs from a representation in that a warranty must always be given contemporaneously with, and as a part of, the contract; whereas a representation precedes and induces to the contract. And, while that is their difference in nature, their difference in consequence or effect is this: That upon breach of warranty (or false warranty) the contract remains binding, and damages only are recoverable for the breach; whereas, upon a false representation, the defrauded party may elect to avoid the contract, and recover the entire price paid.'

"So construed, an examination of the petition will disclose the alleged fraudulent representations of defendant's agents making the sale of the shares of the plaintiffs are not in any sense warranties or statements of warranty, but are merely statements and representations of material existing facts made by the agents for the purpose of inducing plaintiffs to purchase the shares. . . . "Again, where one party to a trade has been induced to enter into it through the fraud, deceit and misrepresentations of the other party, in material matters, no binding trade results, and the defrauded party does not become bound by its terms. As to him the apparently completed transaction remains as though it had never existed. Such party is bound neither to its provisions nor by the principles of the law applicable to valid transactions of such nature."

The court therefore granted the application for a rehearing in this case, holding that "those paragraphs of defendant's answer to the amended petition relied upon to work an estoppel, or in bar of the further prosecution of this suit, must be, and are, held insufficient for such purpose, and, in so far as relied upon to constitute an estoppel or any bar to the further prosecution of this suit, are dismissed therefrom as contrary to good conscience and fair dealing between man and man."

Hospitals—Liability for Misconduct of Employees.—The decisions of the Supreme Court of Nebraska in Wetzel *v.* Omaha Maternity & General Hospital Ass'n (148 N. W., 582) and Broz *v.* Omaha Maternity & General Hospital Ass'n (148 N. W., 575), both holding that a hospital incorporated and conducted for private gain is liable in damages to patients for the negligence of nurses and other employees. While not novel or inherently significant [administering the rule **respondent superior**] they called for at least passing notice because the same tribunal had recently gone to the full length in exonerating a public charitable hospital from liability for negligence. In Duncan *v.* Nebraska Sanatorium Ben. Ass'n (137 N. W., 1120) it was held that a hospital of the latter class is exempt from liability for negligence for injuries to a patient through negligence of its employees, although the patient pays "full price"